

**N.Y. Environmental Conservation Law § 13-0302. Lands underwater of Gardiner's and Peconic bays**

1. Underwater lands ceded to county of Suffolk. All the right, title and interest in which the people of the state of New York have in and to the lands under water of Gardiner's and Peconic bays in the county of Suffolk, except underwater lands within one thousand feet of the high water mark is hereby ceded to such county, for the purposes of shellfish cultivation, to be managed and controlled by such county, provided that such lands shall revert to the state when they shall cease to be used for shellfish cultivation. For the purposes of this section, the term "Gardiner's and Peconic bays" shall mean the waters of Gardiner's and Peconic bays and the tributaries thereof between the westerly shore of Great Peconic bay and an easterly line running from the most easterly point of Plum island to Goff point at the entrance of Napeague harbor.

2. Ratification. The grant of lands under the waters of Gardiner's and Peconic bays, by the commissioners of shell fisheries, in accordance with the provisions of chapter 385 of the laws of 1884, as amended, subsequently held and used by the grantees, heirs, successors, and assigns on which all taxes and assessments have been paid, are hereby ratified and confirmed. Any underwater lands in Gardiner's and Peconic Bays previously granted that revert or escheat to the state or are subject to tax deed by the county of Suffolk shall be available to the county for leasing pursuant to this section. All other lands under such waters, which pursuant to such chapters, have escheated or reverted to the state, are hereby ceded to Suffolk county for the purposes of the cultivation of shellfish, subject to existing valid grants and easements; provided however, that nothing in this section shall interfere with the right of the commissioner of general services to grant lands and easements under water to owners of adjacent uplands, pursuant to the provisions of the public lands law, or of the legislature to make such grants without regard to upland ownership, and to grant franchises to utilities, municipalities and governmental, educational, or scientific bodies for cables, outfalls, ecological studies, and experimentation with controlled marine life.

3. Leases. Suffolk county may lease lands under water ceded to it by the state for the purpose of shellfish cultivation. Provided if no such leases have been executed by December thirty-first, two thousand ten, such authority to lease pursuant to this section shall terminate.

a. Leases may be issued only within areas designated as shellfish cultivation zones on a map or maps to be prepared and approved by the county of Suffolk.

b. No lease shall be granted except upon written application on forms furnished by the county of Suffolk, and properly executed and signed by the applicant.

c. Before a lease is approved, notice shall be provided for at least two months by posting such notice at the bureau of marine resources in the department, the office of the county clerk, and the office of the town clerk in which all or any part of the lands to be leased are located. Such notice shall also be published in the official newspaper of the county. The notice shall include the name of the lessee, the boundaries of the lease, and the area of the lease. A copy of the proposed lease shall be available for public inspection and copying in the office

of the county clerk.

4. Establishment of shellfish cultivation zones. Before leasing or using the lands hereby ceded to it, the county of Suffolk shall cause an accurate survey to be made of such lands, and a map or maps to be prepared therefrom. Such map or maps shall establish shellfish cultivation zones within Gardiner's and Peconic bays. Such map or maps shall be approved by local law. After such map or maps have been adopted, the county shall have the authority to issue leases for shellfish cultivation within the shellfish cultivation zones, as provided herein. Such map or maps shall be updated by the county of Suffolk every five years.

a. Underwater lands within one thousand feet of the high water mark shall not be included in a shellfish cultivation zone.

b. Underwater lands where bay scallops are produced regularly and harvested on a commercial basis shall not be included in a shellfish cultivation zone.

c. Underwater lands where there is an indicated presence of shellfish in sufficient quantity and quality and so located as to support significant hand raking and/or tonging harvesting shall not be included in a shellfish cultivation zone.

d. Underwater lands where the leasing will result in a significant reduction of established commercial finfish or crustacean fisheries shall not be included in a shellfish cultivation zone.

5. Regulations. The county shall, by local law, before leasing any such underwater lands, adopt regulations governing:

a. applications for leases;

b. notices to be given;

c. the form and terms of leases;

d. standards for the approval or denial of leases;

e. administration of leases;

f. the transfer or renewal of leases;

g. marking grounds and testing;

h. fees;

i. recording of leases;

j. bonds; and

k. such other matters as are appropriate to the leasing program.

6. Department authority. Notwithstanding any of the provisions of this section:

a. any person engaging in the cultivation or harvesting of shellfish in a shellfish cultivation zone pursuant to this section shall obtain a permit in accordance with section 13-0316 of this title; and

b. the department shall regulate and control the use of certain types of vessels and equipment for harvesting shellfish, requirements for reseeding, the right to enter upon such leased lands for reseeding or making shellfish population surveys, and enforce all other applicable state laws relating to said underwater lands.

7. Duties of the county clerk. Leases issued pursuant to this section shall be recorded in the office of the county clerk in the manner and form to be determined by local law as provided in subdivision five of this section.

8. Summary proceedings. Upon the failure of a lessee to pay the rental on any date due under the terms of the lease or upon revocation as provided for by local law pursuant to subdivision five of this section, the county may, after written notice to the lessee declare the lease cancelled as of the date set forth in such notice, and may immediately thereafter evict the lessee from such lands. The provisions of article seven of the real property actions and proceedings law shall apply and govern the procedure in such case.

9. Disposition of fees and rents. All fees and rents received shall be deposited into the general fund of the county. However, in the alternative, nothing shall prohibit the county of Suffolk, by local law, from establishing a special fund for the promotion of aquaculture where such fees and rents shall be deposited.

**Laws 2004, ch. 425, which added N.Y. Env'tl. Conserv. Law §13-0302, also provided as follows:**

**Section 1. Legislative findings.** Pursuant to chapter 385 of the laws of 1884, as amended, and chapter 990 of the laws of 1969, the legislature ceded to the county of Suffolk the underwater lands of Gardiner's and Peconic bays as described in such chapters and provided for a statutory framework whereby the business of cultivating shellfish could be managed and regulated. Chapter 990 of the laws of 1969 gave the county of Suffolk the right to lease such underwater lands to persons engaged in shellfish cultivation. Such chapter also ratified and confirmed the title to underwater land grants pursuant to chapter 385 of the laws of 1884, as amended, in which taxes had been paid.

After more than thirty years, the county of Suffolk still has not undertaken a leasing program to persons cultivating shellfish as was intended by chapter 990 of the laws of 1969. Such a program has not been established in spite of the fact that the potential economic benefits from promoting aquaculture to the county of Suffolk and the state of New York are substantial.

A leasing program has not been enacted by the county of Suffolk because a shellfish cultivation program as permitted by the provisions of chapter 990 of the laws of 1969 would be too costly and cumbersome to implement. The failure to undertake an aquaculture leasing program for these underwater lands in Gardiner's and Peconic bays has resulted in adverse economic impacts and the loss of economic opportunity for the region.

The county of Suffolk has worked diligently to study ways to foster shellfish cultivation in Gardiner's and Peconic bays. By Resolution 487-2001, Suffolk

county established a fourteen member Suffolk county aquaculture committee. In June 2002 such committee issued a report entitled "Policy Guidance for Suffolk County on Shellfish Cultivation in Peconic and Gardiner's Bays". Such report made recommendations on policy issues relating to the lease of underwater lands for the cultivation of shellfish.

Based upon such report, Suffolk county approved Resolution 1229-2002 which directed the county's agencies to prepare a more specific survey plan for shellfish cultivation leasing in Peconic and Gardiner's bays. Such report was completed in April 2003. Such report, prepared by the county addresses policy issues related to shellfish cultivation, and identified several changes to state law, specifically chapter 990 of the laws of 1969, which would be required to implement a successful shellfish cultivation leasing program. Suffolk county, by Sense Resolution 39-2003 requested that the state make such legislative amendments. In addition, in July 2001, the Nature Conservancy of Long Island formed the Peconic Bay Aquaculture Advisory Committee to study and make recommendations with regard to the numerous issues involved in establishing a viable and environmentally sustainable aquaculture program in the Peconic region. This advisory committee identified eighteen specific recommendations for the aquaculture program. Those recommendations are incorporated as part of the findings of this act. Such recommendations will be critical to the success of the county's shellfish cultivation leasing program.

It is the purpose of this act to amend the existing law regarding the leasing of underwater lands in Gardiner's and Peconic bays in order to foster the establishment and obtain the economic benefits of a shellfish cultivation leasing program consistent with established conservation principles. It is also the purpose of this act to ratify, confirm, and clarify the rights to cultivate shellfish underwater land grants issued under previous statutes.

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**§ 4. Effect of other laws.** Any provision of chapter 385 of the laws of 1884, as amended, or any other general or special law to the contrary notwithstanding, this act shall be controlling, but all other provisions of such laws, specific, general, or special, not inconsistent herewith shall remain in full force and effect.